

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-3

April 29, 2004

COMTECH21, LLC.

Petition for Finding of Public
Convenience and Necessity to Expand Current
Certificate to Provide Resold Local
Telecommunications Service and UNE-P
Services in Maine

ORDER GRANTING AUTHORITY
TO PROVIDE UNE-P FACILITIES
BASED AND RESOLD LOCAL
EXCHANGE SERVICE

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

In this Order, the Commission grants ComTech21, LLC (ComTech21 or Company) the authority to provide UNE-P facilities based and resold competitive local exchange service in the State of Maine. We also exempt ComTech21 from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On January 7, 2004, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, ComTech21 filed a petition with the Commission requesting authority to provide facilities based and resold local exchange telephone service in Maine.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety

and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting ComTech21 the authority to provide local exchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

ComTech21's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

II. SERVICE TERRITORY

A. Facilities-Based Local Service

ComTech21 specified that it will provide only UNE-P facilities-based local exchange service. As a UNE-P provider, ComTech21 will not need to obtain its own numbering resources. If ComTech21 wishes to expand its facilities-based authority to include services requiring ComTech21 to obtain its own numbering resources, it shall seek approval pursuant to 35-A M.R.S.A. §2102, requesting the Commission to amend this Order. Any such request must specify the specific exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

B. Resold Local Service

ComTech21 has also requested authority to provided resold local exchange service throughout the state. ComTech21 states that it will offer service as a reseller of local exchange service provided by other authorized local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

ComTech21 filed an incomplete schedule of rates and terms and conditions with its application, therefore we do not approve one here. Prior to serving customers, ComTech21 must submit terms and conditions for the Commission's review and approval. If there is any conflict between a provision in ComTech21's terms and conditions and the Commission's Rules or a statute, the rule or statute will control. Included in the Terms and Conditions must be a provision stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. However, the Commission requires ComTech21 to file its rates for our approval as a prerequisite for providing service.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for ComTech21's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . ."

If ComTech21 executes an interconnect agreement(s) with an ILEC(s), it shall seek approval of that agreement by this Commission.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, ComTech21 must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. ComTech21 shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

The Commission grants ComTech21 a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because ComTech21's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, ComTech21 must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment and such other information requested by the Commission.¹ If ComTech21 resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, ComTech21 shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity

VI. OTHER REQUIREMENTS

ComTech21 shall comply with all applicable rules of the Commission and statutes of the State of Maine.

VII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of ComTech21 to provide UNE-P facilities-based and resold competitive local exchange telephone service in the service area(s) of Verizon; and
2. Exempt ComTech21 from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year; and
3. Exempt ComTech21 from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that ComTech21 shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of ComTech21 or of any entity that owns more than 50% of ComTech21. ComTech21 shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. ComTech21 shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, ComTech21 shall amend its rate schedules and terms and conditions to reflect any change in identity; and,
4. Order that prior to providing service to customers ComTech21 will provide proposed terms and conditions and rate schedules for the Commission's review; and,
5. Order that ComTech21 shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine, this 29th day of April, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Diamond

Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.